
TradiesPro (AUS)

AND

[Insert name]

SERVICE AGREEMENT

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THIS AGREEMENT dated day of 2023

BETWEEN TradiesPro (Aus) of [Street], Bankstown, New South Wales (Agent)

AND [Insert Name and ACN or ABN number] (Service Provider)

(collectively “**the Parties**”)

RECITALS

- A.** The Agent is in the business of providing a Principal with a Service Provider to perform certain services. The Agent operates as an agent of a Principal.
- B.** The Service Provider has represented that it is experienced in the supply of such services to the Agent.
- C.** The Parties have agreed that the Service Provider will provide a Principal with the services set out in the Schedule in accordance with the provisions of this Agreement.
- D.** The Parties wish to set out the terms and conditions of the engagement of the Service Provider in this Agreement.
- E.** This Agreement supersedes and replaces all other agreements, understandings or arrangements between the Agent and the Service Provider prior to the execution of this Agreement.

OPERATIVE PART

1. Interpretation

This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;

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- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
 - (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
 - (f) Unless in the event of emergency, if the day on or by which anything is to be done is a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
 - (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
 - (h) Obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

2. Definitions

In this agreement:

“Agreement”: means this agreement.

“Fundamental Breach”: means a breach leaves the non-breaching party with the belief that the breaching party will never complete their part of the contract, or an important term within the contract was not completed. As such Fundamental Breach, includes but not limited to the following:

- (a) A failure to deliver the agreed-upon goods or services.
- (b) Only completing a portion of the job for which you were hired.
- (c) Doing an inferior job than what was expected or agreed upon.
- (d) Failure to commence with Services as set in Schedule.

“Principal”: means the Agent’s customer who sought from the Agent to provide them with a Service Provider. Hence, in consideration of the Principal paying a fee, the Agent shall find a suitable Service Provider to provide the services in the Schedule.

“Schedule”: means a document in the form of a job-sheet setting out certain services, Service Fee, additional conditions, parts and other expenses, as agreed to between the Parties.

“Service Fee”: means the sum paid by the Agent on behalf of the Principal in consideration of the Services conducted by the Service Provider to the Principal, with the exclusion of parts and disbursements.

“Services”: means the services set out in the Schedule, as amended from time to time, with mutual consent of the Parties.

“Worksite”: means the place where the Service Provider conducts the Services.

3. Relationship of the Parties

- (a) The Agent and the Service Provider acknowledge that this Agreement is intended as a contract of service provided to the Principal and not any other relationship and, in particular, not a relationship of:
 - (i) Agency between the Service Provider and the Agent;
 - (ii) employee and employer; or
 - (iii) partnership.
- (b) The Service Provider is responsible for paying its own income tax, Goods and Services Tax, the cost of its own staff and employees, transport cost and superannuation payments.

4. Appointment

In consideration of the Agent paying, on behalf of a Principal, the Service Provider in accordance with rates of pay set out in the Schedule, the Service Provider agrees to provide the Services to a Principal, during the Agreement term in accordance with the provisions of this Agreement.

5. Acknowledgements

- (a) The Agent acknowledges and agrees that:
 - (i) the Service Provider may employ its own staff;
 - (ii) the Service Provider uses its own equipment to perform the required Services.
- (b) The Service Provider acknowledges and agrees that:
 - (i) it is responsible for the coordination and the management of the Services,
 - (ii) its staff members;
 - (iii) equipment and parts required to complete the Services;
 - (iv) any other ancillary requirements to complete the Services to the highest standards of workmanship;
 - (v) commencing and completion of the Services at the date and time stipulated in the Schedule ;
 - (vi) to provide its own insurance policies at the commencement of this Agreement, and until such time this Agreement is terminated;
 - (vii) by signing this Agreement, the Agent is under no obligation to provide work to the Service Provider; rather it is at the discretion of the Agent to provide work to the Service Provider;

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- (viii) in the event of the Service Provider does not commence with the Services as set out in the Schedule, the Agent may:
- issue an initial warning to the Service Provider, and reschedule a second commencement date;
 - if the Service Provider does not commence with Service on the second date, the Agent may deduct \$90.00 from the next invoice, and schedule a third commencement date;
 - if the Service Provider fails commence with the Services on the third date, the Agent would consider such failure as a Fundamental Breach of this Agreement.
- (ix) at the request of the Agent, the Service Provider shall provide the Agent with any document related to any person attending the Worksite or any document related to the entity of the Service Provider. Such documents may include but not limited to, the following:
- copy of the trade certificate;
 - copy of trade licences or authority;
 - permit;
 - driver's licence or any identification documents;
 - proof of expertise;
 - criminal record;
 - copy of insurance policies;
 - any document related to the Work, health and safety to any person attending the Worksite or performing the Services; or
 - any other document relevant to this Agreement or the Services.

6. Provision of the Services

The Parties agree that the Service Provider must:

- (a) Exercise all due care, skill and attention in providing the Services;
- (b) Do all things necessary to ensure that the Services are provided to the reasonable satisfaction of the Principal;
- (c) Ensure that the Services are rendered in compliance with any relevant codes, standards and regulations;
- (d) Maintain a safe environment for customers, guests and staff;
- (e) Ensure that the Services are carried out in a proficient manner by professionally trained and qualified staff;
- (f) Ensure an appropriate range of equipment, staff and Services as set out in the Schedule are operating at all times;
- (g) Comply with all legal requirements as may from time to time apply to the provision of the Services; and
- (h) Perform the key service responsibilities set out in the Schedule.

7. Duration of the Agreement

The Parties agree that this Agreement is ongoing until such time it is terminated by either one of the Parties pursuant to clause [28] hereunder.

8. Variation of the Services

- (a) The Parties agree that the Service Provider must carry out and perform the Services during the days and at times set out in the Schedule.
- (b) The Service Provider acknowledges and agrees that the scope of the Services required may change with changes in the Principal's request. Hence, the Services, the Service Fees and completion of Services deadline as set out in the Schedule may subsequently be varied.
- (c) To that extent, the Service Provider shall not object or refuse to perform any reasonable variation to the Services.

9. Payment and invoicing

- (a) Subject to the Service Provider performing the Services in accordance with the terms of this Agreement, the Agent shall pay the Service Provider in accordance with the rates or the fees of pay set out in the Schedule in the manner and at the times provided for in this Agreement or as set out in the Schedule.
- (b) Where the Service Provider is entitled to invoice the Agent for all or part of the amount owed to the Service Provider, such invoices must be paid by the Agent within 30 days of receipt of invoice.
- (c) The Agent reserves the right to question any invoice presented, require correction of any error and receive a refund of any overpayment, regardless of when the overpayment occurred.

10. Provision of labour and equipment of the Service Provider

Subject to this clause, the Service Provider must provide at its own cost and expense all labour with appropriate training and skills, resources and equipment necessary to perform the Services in accordance with this Agreement.

11. Retention

- (a) The Agent shall retain the sum of ten per cent (10%) deduced from the Service Fee ("**Retention**"), for the period of (3) three months commencing from the time of completion of the Services. After such time, the Agent shall pay the Retention to the Service Provider.
- (b) The Retention is to be used by the Agent to remedy any defective Services. The Agent shall only expend the Retention or portion of the Retention, if it is of the view that the Services were defective.

12. Compliance with directions

The Service Provider must comply with and must ensure that its employees at all times when providing the Services comply with:

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- (a) Any qualification and accreditation requirements as determined by the Agent;
 - (b) All reasonable instructions and directions of the Agent or its employees;
 - (c) All statutory provisions, regulations, orders and by-laws of any government, municipal or statutory authority which relate to the provision of the Services;
 - (d) Generally accepted standards of good and proper conduct and behaviour; and
 - (e) The Agent's policies in force from time to time, including its Work health and safety policies and procedures.

13. Alterations to property

The Service Provider must not mark, paint, drill into or otherwise deface any property belonging to the Principal or make any alterations to the structure, fittings, decorations or furnishings of any property belonging to the Principal, without the prior written approval of the Agent or unless in the ordinary course of providing the Services.

14. Work, Health and Safety

The Service Provider must ensure that it and its employees comply with the requirements of all relevant work health and safety legislation or regulations in relation to the provision of the Services.

15. Accidents and hazards

- (a) The Service Provider must not create or leave unattended any hazards, accidents and injuries. All hazards, accidents and injuries must be reported immediately to the Agent.
- (b) All potential hazards, accidents and injuries which the Service Provider has noticed, whether caused by the Service Provider or not, must be reported to the Agent as soon as possible and no later than the next business day.
- (c) Where the acts or omissions of the Service Provider cause loss, damage or injury to third parties the Service Provider must promptly deal with any third-party claims.

16. Risk

The Service Provider must ensure that its employees and members of the general public are not exposed to risk to their health or safety arising from the provision of the Services.

17. Key performance indicators

- (a) The Service Provider must ensure that it shall at all times comply with the key performance indicators set out in the Schedule. Additional key performance indicators may be developed jointly by the parties following the entering into of this agreement.

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- (b) The Service Provider acknowledges and agrees that the key performance indicators shall be subject to monthly review by the Agent and will provide a basis for assessing the performance of the Service Provider in the provision of the Services.

18. Failure to achieve key performance indicators

- (a) In the event of the Service Provider consistently failing to achieve the key performance indicators, such failure shall be considered to be a Fundamental Breach of this Agreement.
- (b) A persistent failure shall mean the failure to achieve key performance indicators on more than three occasions during the Agreement term. Should this occur, the Agent may at any time exercise the following rights:
 - (i) Withhold payments owed to the Service Provider until the Services have been performed to the satisfaction of the Agent;
 - (ii) Engage any other Service Provider to complete or correct the Services and recover or deduct from any payments due to the Service Provider or from the performance bond the costs of engaging any other contractor to complete or correct the Services; and
 - (iii) Terminate this agreement.

19. Reports

- (a) The Service Provider must provide to the Agent a report in a form advised by the Agent from time to time including the content set out within the Schedule.
- (b) The content and frequency of the reports may be varied by the Agent during the term of this Agreement.

20. Qualifications and accreditations

The Service Provider must have current qualifications and accreditations set out in the Schedule and comply with all requirements governing those qualifications and accreditation.

21. Confidentiality

The Parties covenant on behalf of themselves and their financial, legal and other advisors that they will keep confidential and not divulge either directly or indirectly to any person any information relating to the business, processes, systems or affairs of the other party which is of a confidential nature or which is not otherwise in the public domain, including the terms of this Agreement, save to the extent that the disclosure may be required by statute or may reasonably be required for the purpose of enabling the parties to fulfil their respective obligations under this Agreement or as may otherwise be required by law. This clause shall have force after the termination or expiry of this Agreement.

22. Damage to property

- (a) The Service Provider must report immediately to the Agent any damage caused by the Service Provider or its employees to any property facilities and equipment whether owned by the Agent or the Principal or any third party.
- (b) The Service Provider agrees that it must, at its own cost and expense, make good any damage resulting from the performance of the Services or otherwise caused or contributed to, directly or indirectly, by the Service Provider or its employees.
- (c) Any such repair shall be carried out by the Service Provider acceptable to the Agent without undue delay and in all cases subject to the terms and conditions of this agreement.

23. The Service Provider's warranties

The Service Provider warrants at all times during the contract term that:

- (a) It is a company duly incorporated in Australia and has the power and authority to enter into this Agreement on the terms set out herein **[delete if not applicable]**;
- (b) It has the expertise, resources and capacity to perform to the highest standard all of its obligations under this agreement;
- (c) Quality workmanship, materials and equipment will be used in the performance of the Services;
- (d) It will have all permits, licences and authorisations required in relation to the provision of the Services;
- (e) It will comply with all statutory provisions, regulations, orders and by-laws of any government, municipal or statutory authority which relate to the provision of the Services;
- (f) This Agreement constitutes a legally valid and binding obligation on the Service Provider, enforceable in accordance with its terms;
- (g) It has made all enquiries of the Agent for the purpose of making an informed assessment of its ability to enter into and to perform all of the obligations of this Agreement; and
- (h) It has exercised its own judgment in entering into this Agreement and has not relied on any warranty or representation made by the principal, its officers, employees or agents, save as specifically set out in this agreement.

24. Release, discharge and indemnity

- (a) The Service Provider agrees that its occupation and use of the property in the course of providing the Services is at its own risk and hereby releases and discharges the Principal, its officers, employees, agents and the Agent, its officers, employees from all claims and demands of any kind whatsoever and from any liability including, without limitation, liability for negligence which may arise in respect of any accident, damage, destruction, debt or

injury to the Service Provider, its employees, agents, or permitted subcontractors or to any property of the Service Provider, its employees, agents or permitted sub-contractors which occurs in relation to the provision of the Services , save where such liability arises from any wilful or negligent act or omission of the Principal, its employees or agents and of the Agent, its employees or agents.

- (b) The Service Provider must indemnify, and keep indemnified the Principal, its officers, employees, volunteers and agents against all claims, actions, demands, proceedings, liabilities, damages, costs and expenses whatsoever and howsoever arising, paid, suffered or incurred by the Principal, its officers, employees or agents, directly or indirectly as a result of or in connection with the provision of the Services .
- (c) The Service Provider must indemnify, and keep indemnified the Agent, its officers, employees, volunteers and agents against all claims, actions, demands, proceedings, liabilities, damages, costs and expenses whatsoever and howsoever arising, paid, suffered or incurred by the Agent, its officers, employees or agents, directly or indirectly as a result of or in connection with the provision of the Services .
- (d) The Service Provider acknowledges and agrees that the Agent is not liable or responsible for any defective Services provided by the Service Provider. The Service Provider shall bear such liability and provide remedies to any defective Services in an amicable and expeditious manner.

25. Insurance

The Service Provider must obtain and maintain a current policy or policies of public liability insurance for an amount of (twenty million Australian dollars) \$20,000,000.00 or such other amount reasonably approved by the Agent, which policies name and protect the Agent and its respective officers, employees and agents against any expenses, claims, demands, suits, proceedings, causes of action or loss or damages arising out of any claim for injury, death, loss or damage suffered by any third party or by the Agent by reason of or arising out of or incidental to the provision of the Services or the obligations of the Service Provider under this agreement. The Service Provider must furnish to the Agent satisfactory evidence of currency of the insurances seven days prior to the commencement date.

26. No assignment

This Agreement is personal to the Service Provider and must not be assigned without the prior written consent of the Agent. Such consent may be given or withheld at the Agent's absolute discretion. Any assignment or purported assignment shall be void and of no effect.

27. Subcontracting

The Service Provider must not engage any subcontractors or subcontract any of its obligations under this Agreement without the prior written consent of the Agent, which consent may be granted or withheld at the discretion of the Agent. Where approval is granted, the Service Provider remains wholly responsible for acts or omissions of the subcontractor.

28. Termination

- (a) This Agreement may be terminated by either party in the event of the other party breaching a term of this Agreement and failing to remedy the breach within 14 days after having received notice in writing of the breach.
- (b) Either party may terminate this Agreement by written notice to the other party if the other party becomes subject to insolvency proceedings or events.
- (c) The Agent may terminate this Agreement upon written notice to the Service Provider if the Service Provider commits a Fundamental Breach of this Agreement within the meaning of this Agreement.
- (d) The Agent, at its discretion, may terminate this Agreement by issuing a written notice to the Service Provider within 3 months prior to the termination date.
- (e) the Service Provider may terminate this Agreement by issuing a written notice to the Agent within 3 months prior to the termination date, provided no outstanding Services to be completed. The termination note must only be issued after all Services has been completed.
- (f) If such termination is disputed, it shall be dealt with in accordance with the dispute resolution provisions of this agreement.

29. Dispute resolution

- (a) If a dispute arises before any proceeding is commenced the party claiming that a dispute has arisen must give 14 days' notice to the other party setting out the dispute and seeking discussion and compromise to resolve the dispute.
- (b) If after 14 days the dispute is not resolved then it must be referred to mediation on the same terms as those ordered by the Supreme Court of New South Wales and the costs of the mediation shall be borne by the parties equally.
- (c) Notwithstanding the preceding provisions of this clause, the Service Provider must continue to provide the Services and perform its obligations under this Agreement pending resolution of the dispute.
- (d) Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

30. Notices

A notice or other communication to a party must be in writing and delivered to that party or that party's practitioner in one of the following ways:

- (e) Delivered personally; or
- (f) Posted to their address when it will be treated as having been received on the second business day after posting; or

- (g) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (h) Sent by email to their email address when it will be treated as received when it enters the recipient's information system.

31. Costs

Each party will pay their own costs in relation to this Agreement.

Execution page

SIGNED AS AN AGREEMENT

<p>SIGNED BY TRADIESPRO PTY LTD)</p> <p>[insert ACN] in by its Director and)</p> <p>Secretary in accordance with s127)</p> <p>Corporations Act 2001</p>	<p>.....</p> <p>Signature of Director</p>
<p>.....</p> <p>Signature of witness</p>	<p>.....</p> <p>Print name of Director</p>
<p>.....</p> <p>Print name of witness</p>	<p>.....</p> <p>Signature of Secretary</p>
	<p>.....</p> <p>Print name of Secretary</p>

SIGNED BY the SERVICE PROVIDER)
[insert name] and [ACN if company])

.....
in the presence of:

.....
Signature

.....
Signature of witness

.....
Print name of witness